

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>KENNETH MALIK MILLER,</b>	:	<b>CIVIL ACTION NO. 1:10-CV-946</b>
<b>Plaintiff</b>	:	
	:	<b>(Judge Conner)</b>
<b>v.</b>	:	
	:	
<b>R.M. LAWLER, Superintendent, <i>et al.</i>,</b>	:	
<b>Defendants</b>	:	

**ORDER**

AND NOW, this 18th day of April, 2012, upon consideration of the motion for reconsideration (Doc. 87) filed by plaintiff Kenneth Malik Miller (“Miller”) on March 6, 2012, wherein Miller avers that he never received the report and recommendation (“R&R”) of Magistrate Judge Mannion dated February 3, 2012 (Doc. 84), and therefore never had an opportunity to file objections to the R&R, and it appearing that on February 27, 2012, this court adopted the R&R, directed the entry of judgment in favor of defendants and closed the above-captioned case, (see Doc. 85), and it further appearing that judgment was entered (Doc. 86) on February 27, 2012, and the court construing the motion as one for relief from judgment, see FED. R. CIV. P. 60(b) (stating that “the court may relieve a party . . . from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect”), and the court finding Miller’s contention that he never received the R&R to be credible given the short time between his receipt of the February 27, 2012 order adopting the R&R and the filing of the instant motion as

well as Miller's active participation throughout the litigation,<sup>1</sup> and the court concluding that the circumstances warrant the relief requested, it is hereby ORDERED that:

1. Plaintiff's motion for reconsideration (Doc. 87) is CONSTRUED as a motion for relief from judgment.
2. The motion (Doc. 87) as construed is GRANTED.
3. The Court Order of February 27, 2012 (Doc. 85) is VACATED.
4. The Judgment of February 27, 2012 (Doc. 86) is VACATED.
5. The Clerk of Court is directed to REOPEN the above-captioned matter.
6. The Clerk of Court is directed to mail a copy of Document 84 and all attachments to the plaintiff.
7. Plaintiff shall file objections to the Report and Recommendation (Doc. 84) within twenty one (21) days of the date of this order.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge

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<sup>1</sup> Miller has previously filed prompt motions for extensions of time in order to submit briefs in opposition to defendants' motions. (See Docs. 49, 76). In addition, the court notes that Miller has filed several letters requesting status updates and copies of the docket sheet in the above-captioned matter. (See, e.g., Docs. 25, 56, 80, 82, 83). Miller's last request for a docket sheet was received by the court on January 25, 2012. (Doc. 83). The court mailed Miller a copy of the docket sheet that day. (Docket annotation of Jan. 25, 2012). Magistrate Judge Mannion's R&R issued on February 3, 2012. (See Doc. 84).